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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Stephen Baldwin, et al. Art Unit 3761
Serial No. 10/660,319
Filed September 11, 2003
Confirmation No. 5393
For ABSORBENT PRODUCT WITH IMPROVED LINER TREATMENT
Examiner Catharine L. Anderson

August 26, 2008

REPLY BRIEF

Applicants are submitting this Reply Brief in response to Examiner's Answer dated June 26, 2008.

In the Examiner's Answer, the Office asserts that Applicants' argument that Gatto et al. fail to disclose the specific rheology enhancers as required by claim 1 is not persuasive as Gatto et al. discloses in column 13, lines 45-47 that the rheology enhancers may be a mixture of various rheology agents. Applicants respectfully disagree as while Gatto, et al. provide a **laundry list** of compounds that can be used as rheology agents, no where is the specific combination of di-functional alpha-olefins and styrene or the combination of alpha-olefins and isobutene taught as required for a *prima facie* case of anticipation.

Applicants recognize that a prior art reference is not limited to its preferred embodiments, however, a sufficient enabling disclosure with respect to the entirety of the claimed invention is required for the reference to teach each and every element of Applicants' claim; that is, in this present case there must be an enabling disclosure of the combination of di-

functional alpha-olefins and styrene or the combination of alpha-olefins and isobutene as required for the rheology enhancer in Applicants' claim 1. As noted above, Gatto et al. merely provide a laundry list of compounds with no teaching that the specific combination of di-functional alpha-olefins and styrene or the combination of alpha-olefins and isobutene can be made.

Additionally, the di-functional alpha-olefins used in Applicants' specific combination of di-functional alpha-olefins and styrene are **not even mentioned** in Gatto et al. Particularly, as noted in the Appeal Brief, at best, Gatto et al. may have disclosed the **genus** of poly-alpha-olefins. Even assuming that the limited disclosure of the Gatto et al. reference provides an enabling disclosure of this genus, Applicants' claim 1, which includes the combinations of **di-functional alpha-olefins** and styrene or of alpha-olefins and isobutene or alone or in combination with mineral oil or petrolatum, defines a species of that genus no where disclosed in the reference. As stated in M.P.E.P. §2131.02, a genus does not anticipate a claim to a species within the genus, unless the species is clearly named or well delineated. Applicants assert that the broad generic disclosure of poly-alpha-olefins as set forth in Gatto et al. fails to clearly provide or delineate the combinations of di-functional alpha-olefins and styrene or combinations of alpha-olefins and isobutene alone or in combination with mineral oil or petrolatum, and, as such, cannot anticipate the rheology enhances required by Applicants' claim 1.

Furthermore, there is no apparent reason for modifying the Gatto et al. reference to arrive at the instantly claimed

rheology enhancers. Specifically, no where is there motivation to substitute the rheology enhancers of claim 1 for one of the multiple rheological agents disclosed in Gatto et al.

With all due respect, it appears that the Office has used impermissible hindsight analysis and reconstruction when modifying the Gatto et al. reference.[1] Notably, it would be clear to one skilled in the art reading Gatto et al. that a skin care composition can include a rheology enhancer. There are, however, a myriad of rheology enhancers, many of which are used in skin care compositions. What is important is that there is no motivation or suggestion to use the rheology enhancers as claimed in amended claim 1, over any of the other enormous number of rheology enhancers described in the art.

[1] M.P.E.P. §2142 provides that in order to reach a proper determination under 35 U.S.C. §103(a), the Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. Knowledge of Applicants' disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences." The tendency to resort to "hindsight" based upon Applicants' disclosure is often difficult to avoid due to the very nature of the examination process. However, as stated by the Federal Circuit, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art. Grain Processing Corp. v. American-Maize-Products, Co., 840 F.2d 902, 904 (Fed. Cir. 1988).

VIII. Conclusion

In addition to the reasons set forth in Applicants' Appeal Brief, the rejections of the claims on appeal are in error for the reasons set forth above. Therefore, Applicants request that the Examiner's rejections of claims 1-37 be reversed. Applicants do not believe that any fee is due in connection with this reply. However, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment of any fees during the pendency of this application to Deposit Account No. 01-2384.

Respectfully submitted,

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